



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 2016-0004
OWNER: THE CHILDREN'S HOSPITAL
CORPORATION
132 CARLETON STREET, BROOKLINE, MA

Petitioner, The Children's Hospital Corporation, applied to the Board of Appeals for zoning relief for renovations to the main building at the Property (as defined below) and to change the use from a single-family dwelling to a lodging house for use by families of inpatient children being cared for at Boston Children's Hospital ("Children's"), including one caretaker suite. The proposed facility is located at 132 Carlton Street, Brookline, Massachusetts (the "Property").

The Board of Appeals administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed March 24, 2016 at 7:30 p.m. in the Selectmen's Hearing Room, 6th Floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published March 10th and 17th, 2016 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

132 CARLTON ST – CONVERT EXISTING SINGLE-FAMILY DWELLING TO LODGING HOUSE WITH 1 CARETAKER SUITE in an S-7, Single-Family, residential district, on

March 24, 2016, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: THE CHILDRENS HOSPITAL CORPORATION) *Precinct 1*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 4.07: Table of Use Regulations, Use #7**
- 2. Section 5.09.2.e: Design Review**
- 3. Section 5.20: Floor Area Ratio**
- 4. Section 5.43: Exceptions to Yard and Setback Regulations**
- 5. Section 5.50: Front Yard Requirements**
- 6. Section 5.60: Side Yard Requirements**
- 7. Section 5.70: Rear Yard Requirements**
- 8. Section 6.02, Paragraph 1: Table of Off-Street Parking Requirements**
- 9. Section 6.02.2.a: Off-Street Parking Regulations**
- 10. Section 6.04.5.c.3 or 4: Design of All Off-Street Parking Facilities**
- 11. Section 6.04.12: Design of All Off-Street Parking Facilities**
- 12. Section 6.06.6 and 7: Off-Street Loading Regulations**
- 13. Section 7.04.4: Illumination**
- 14. Section 8.02.2: Alteration or Extension**
- 15. Section 9.09: Conditions for the Grant of a Use Variance**
- 16. Modification of Board of Appeals Case #1367, August 19, 1967 and Case #1703, August 12, 1971**
- 17. Any Additional Relief the Board May Find Necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2326; TDD (617)-730-2327; or email at lgellineau@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey*

Jonathan Book

Present at the hearing were Chairman Jesse Geller and Board members Christopher Hussey and Kate Poverman. In response to the Chairman's inquiry, the Petitioner waived reading of the legal notice. The Chairman then outlined the order to be followed in the proceeding.

Petitioner's proposal was introduced by Charles Weinstein, Chief Real Estate Officer, Boston Children's Hospital, who introduced Martin Batt of Isgenuity and Timothy Sullivan of Goulston & Storrs. Mr. Weinstein stated that the Petitioner is seeking to convert the use of the Property into a lodging house for the families of children being cared for at Children's. The proposed facility will consist of 16 sleeping rooms without independent cooking facilities and 1 one-bedroom caretaker unit with independent cooking facilities (the "Project"). Mr. Weinstein explained that a similar project, which received a preservation award from the Town, was completed at 241 Kent Street in Brookline to provide families an affordable place to stay locally in a residential environment for extended periods of time.

Martin Batt of Isgenuity, 321 Summer Street, Boston, Massachusetts, presented the Project's design.

Using visual aids, Mr. Batt explained that the French Renaissance style structure was built in 1908 and includes an accessory garage that was deemed to be architecturally significant by the Preservation Commission. The Property abuts a private right-of-way to the north and is bound by public ways to the east and south. Mr. Batt informed the Board that the Petitioner will be retaining and restoring the historic structures at the Property and that very few minor alterations are proposed beyond purely restorative work. These alterations include installing a new curb edge along the Carlton and Euston Street lot lines to prevent mulch and

garden materials from falling onto the public sidewalk, minor work on the roof to accommodate the new elevator, modifications to the side entrance to incorporate an ADA compliant access ramp and the installation of a 6-foot tall masonry wall along a portion of the Euston Street lot line to enclose an outdoor passive patio space that is accessible from the rear of the structure. Mr. Batt noted that all of the proposed exterior improvements have been reviewed and approved by the Historic Preservation Commission. Mr. Batt concluded his portion of the presentation by reviewing the anticipated floor plans with the Board.

Timothy W. Sullivan of Goulston & Storrs, PC, 400 Atlantic Avenue, Boston, Massachusetts, continued the Petitioner's presentation.

Mr. Sullivan reiterated that the Petitioner is proposing to renovate the main building at the Property to create 16 sleeping accommodations without independent cooking facilities which would be let for compensation and 1 accessory one-bedroom caretaker unit with independent cooking facilities. As part of the Project, the Petitioner will also restore the historic garage, which is currently structurally unsound, to park two vehicles, and will create 2 additional on-site open air parallel parking spaces. Although the Project involves change of use and alteration and repair, the existing improvements are not being enlarged. Mr. Sullivan indicated that the Property was most recently used as the residence for the president of Boston University and that both the main building and the accessory garage are historic assets.

Mr. Sullivan explained that the property is in the S-7 District, that the main building is a non-conforming building with respect to Floor Area Ratio (FAR) and that the garage is a non-conforming structure with respect to dimensional requirements. Mr. Sullivan observed that the Project will not increase either legally non-confirming aspect of the Property. Mr. Sullivan further explained that any dimensional non-compliance of the existing building would be a validly existing structural non-conformity with respect to the dimensional requirements applied to 1-family detached dwellings. However, since the use of the Property

is being converted to Lodging House, the Property is subject to the dimensional requirements for structures and uses other than 1-family detached dwellings, which will result in more stringent setbacks applied to the Property.

According to Mr. Sullivan, the Project requires: (i) Special Permit under Section 5.09.2.e for Design Review; (ii) Special Permit under Section 5.43 for exceptions to the front and rear yard requirements set forth in Sections 5.50 and 5.70; (iii) Special Permit under Section 6.04.12 for modifications to the design of off-street parking facilities set forth in Section 6.04.5.c.1 and 3; (iv) Special Permit under Section 6.06.7 for a reduction in the number of loading bays required under Section 6.06.6; (v) Special Permit under Section 8.02.2 to alter a pre-existing non-conforming structure or use with respect to Floor Area Ratio (Section 5.20) and dimensional requirements applicable to the garage (Section 5.70); (vi) Variance under Section 9.09 for a Lodging House Use prohibited by Section 4.07; and (vii) modification of Board of Appeals Decision Case #1703 dated August 12, 1971.

With respect to the various special permits required, Mr. Sullivan observed, as follows:

Although the Property is located in a single family residential zone, the renovations and enhancements to the existing building will be visually consistent with single-family residential use and will be indistinguishable from the neighboring single-family uses. The Property is currently unoccupied and the Project will enable the Petitioner to improve the neighborhood by repairing and restoring the Property, which entails a significant restoration to a valuable architectural asset, consistent with the scale and style of the surrounding structures.

The Project will improve the neighborhood by improving an unoccupied structure, restoring the Property's historic character, enhancing the landscaping, and giving the

neighborhood assurance that the Property will continue to be properly maintained. Moreover, the Project reflects the residential nature of the neighborhood and existing residences.

The Project will not cause any nuisance nor any serious hazard to vehicles or pedestrians. The Project will be designed and operated to comply with all state and local noise ordinances, and lighting shall be shielded so as not to spill over onto adjacent properties. Similarly, the Project will include adequate off-street parking, with a safe means of ingress and egress, so that the streets will be unaffected and unobstructed. In fact, guests will consist primarily of out-of-town visitors without cars in Boston, and who will therefore travel to and from Boston Children's Hospital primarily by a car service provided by the Hospital.

The Project will be provided with parking, sanitary, life safety and other facilities of high-quality in compliance with applicable building and health codes.

The Property's previous use was as a single family residence for the President of Boston University, and thus the Property was not previously used for housing for low or moderate income people. The proposed use will provide housing for parents of children receiving treatment at Boston Children's Hospital.

The Project meets the community impact and design review standards set forth in Section 5.09(4) of the Zoning By-Law. Specifically, and as noted in the Project's Impact Statement, the Project's design incorporates each of Section 5.09(4)'s standards regarding the preservation of trees and landscape, the relation of buildings to the environment, open space, circulation, stormwater drainage, utility service, advertising features, safety and security, heritage, microclimate, and energy efficiency.

As required under Section 5.43 of the Zoning By-Law, the Project assures the same standard of amenity to nearby properties as would have been provided by compliance with the Zoning By-Law as measured by provision or preservation of a condition or facility not otherwise required that would counterbalance such a reduction. In addition to retaining the

existing dimensions, the Project will enhance the open spaces at the Property with new plantings and outdoor spaces. The Project accordingly will preserve and enhance the open spaces at the Property, which is not otherwise required.

The Project will be used to provide housing for parents of children receiving treatment at Boston Children's Hospital. Accordingly, in view of the proposed use, hours of operation, and delivery service requirements, there is no need to provide separate loading facilities at the Project. Any deliveries that may be necessary will be accomplished through standard box trucks deliveries in a manner comparable to deliveries by overnight delivery services to other residents in the neighborhood.

With respect to the use variance finding required by Section 9.09 and the general findings required for a variance under M.G.L. Chapter 40A, Section 10, Mr. Sullivan commented that the applicant will enter into a tax agreement with the Town for a term of not less than ten (10) years enabling the applicant to avail itself of the provisions of Section 9.09 of the Zoning By-Law and observed, as follows:

The Property abuts streets on the three sides and is elevated above Carlton Street, which are characteristics relating to the soil conditions, shape or topography that do not generally affect the S-7 District. This factor renders the Property less suitable for single family residential use and presents architectural and design challenges, making the variance appropriate.

The Property is currently unoccupied. Allowing the Lodging House use will enable the Petitioner to re-use the Property in a manner consistent with other residences in the neighborhood by repairing and restoring the Property. A literal enforcement of the provisions of the Zoning By-Law would make the renovation and use of the Property as a facility to provide housing for parents receiving treatment at Boston Children's Hospital unfeasible

since the provisions of the Zoning By-Law would not allow the Petitioner to accomplish its program goals.

The Project contributes to the public good and does not nullify or derogate the intent or purpose of the Zoning By-Law. The Project provides housing to the parents of hospitalized children. Further, the Project will achieve the restoration of an architectural asset and will allow an unused property to be put in good repair. The Project is entirely consistent with the Zoning By-Law's stated purpose of promoting the public health, safety, convenience and welfare, and the Zoning By-Law's specific goals of: (i) conserving the value of land and buildings; (ii) providing for adequate light and air; (iii) reducing the hazards from fire and other danger; (iv) encouraging the preservation of historically and architecturally significant structures; and (v) encouraging housing opportunities for people of all income levels.

The existing main building on the Property was built in or around 1908 and the garage was built in or around 1921. Both structures have several features of historic and architectural significance, including an ornate front façade and other intricate architectural elements. The Petitioner has agreed with the Brookline Preservation Commission and the neighbors to preserve and restore the Property in an historically accurate manner, including the repair and/or reconstruction of the garage, and to use materials consistent with the historic character of the existing building throughout the exterior renovation. This type of repair, and maintenance of the Property as a visual and taxable asset, would not be accomplished by an as-of-right use. As noted above, the Petitioner has agreed with the Town to make payments in lieu of taxes.

The Chairman of the Board called for any comments from the public.

Dr. Sam Bogoch stated that since 1957 he and his wife Eleanor have lived at 122 Carlton Street, which is directly across the street from the Property. Dr. Bogoch stated that he is not opposed to a use that will help families and children. However, Dr. Bogoch expressed

concern over potential adverse impacts associated with noise, lighting, parking, delivery, traffic, and the overall increase in the intensity of use.

Dr. Bogoch also questioned whether the proposed use conversion would result in the same level of amenity for him as an abutting resident and expressed concern that a proposed access gate to rear portions of the Property from Euston Street will increase the likelihood of deliveries and lodger drop-off at the Euston Street side of the Property rather than the private way located on the north of the Property. Dr. Bogoch concluded his statements by encouraging the Petitioner to maintain existing trees located around the proposed rear patio.

The Planning Board through Jay Rosa, the Zoning Coordinator, presented the comments of the Planning Board as contained in its report dated March 17, 2016, which comments are as follows:

The Planning Board is supportive of the proposal to convert the existing single-family dwelling into a lodging house for families with children receiving treatment at Boston Children's Hospital. The current home is exceedingly large, and it can adequately accommodate the proposed number of rooms and the intensified use. Most of the required zoning relief is due to the change of use from a single-family home to a lodging house, not due to physical changes on site.

The proposed exterior changes are minimal, consisting primarily of restored windows and doors, and they have been reviewed and approved by the Town's Preservation Commission. Although the building's footprint is not expanding, a site plan indicating building setbacks should be submitted. All vehicular access to the site will be located along the private way and away from residential neighbors. The two new parking spaces will not obstruct travel along the private way and will not be especially visible to other neighbors or the streetscape from Carlton Street. However, the applicant should consider increasing the length of the parking space closest to Carleton to provide better maneuverability. The hospital will be providing on-call car transportation between the property and Children's Hospital, which will serve to reduce parking demand. The structure is a significant and attractive residential building, and this use will not detract from its standing in the neighborhood.

Therefore, should the Board of Appeals find that the statutory requirements for a use variance are met, the Planning Board recommends approval of the plans titled "132 Carlton Street Renovations" prepared by Isgenuity, dated 1/04/2016 and 3/7/16, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, including color, window and material details, subject to

the review and approval of the Preservation Commission and the Assistant Director of Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit a final site and landscaping plan, indicating all parking space dimensions and pickup areas, mechanical equipment, lighting, walls, fencing, and counterbalancing amenities, subject to the review and approval of the Preservation Commission and the Assistant Director of Regulatory Planning.
3. One identification sign shall be allowed subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Yanovitch, Deputy Building Commissioner, stated that the Building Department appreciates the concerns raised by Dr. Bogoch, and he characterized the requested zoning relief as being minimal, aside from the use variance itself in which he defers to the findings of this Board. Mr. Yanovitch concurred that the Project design was significantly vetted and the Town Zoning By-Law provides for use variance, particularly if the proposal serves to restore and maintain an historic structure as a taxable asset. Mr. Yanovitch noted that the proposed gate along Euston Street does improve egress when considered from a Building Code standpoint. Additionally, Mr. Yanovitch confirmed that a lighting plan should be submitted for Town review prior to the issuance of a building permit if relief is approved by the Board.

In response to the concerns raised by Dr. Bogoch, Mr. Sullivan stated that majority of families utilizing the Property do not drive to the Property because they do not live in the immediate area. As a result, traffic impacts are minimal. Additionally, Mr. Sullivan observed that the Project is designed for entry and exit from the private way and the referenced gate on Euston Street is largely intended for egress purposes.

Also in response to Dr. Bogoch, Mr. Batt stated that one tree located in the rear yard is slated for removal because an arborist determined that it is dying. Mr. Weinstein further stated that landscape features along Euston Street can be revised to remove the path shown on the plans and that the Petitioner is happy to work closely with the Bogochs in an effort to mitigate potential impacts.

Mr. Hussey stated that the access ramp along the private way is well designed and takes advantage of the natural grade of the Property. Mr. Hussey felt that this design is ideal for focusing all guest and delivery related activity in this area.

Mr. Batt confirmed for Ms. Poverman that the brick wall along a portion of the Euston Street lot line does not extend beyond 6 feet in height.

In response to Ms. Poverman's question regarding whether any mitigation strategy to limit noise in the rear patio area has been considered, particularly during evening hours, Mr. Weinstein explained that the population utilizing this Property is not inclined to participate in loud outdoor activities and this passive outdoor space is located directly below the care taker living quarters.

Mr. Weinstein confirmed for Ms. Poverman that he is not aware of any safety issues or complaints have emerging at the 241 Kent Street property.

The Board having considered the foregoing information and the written materials submitted by the Petitioner and having reviewed the plans and the relief requested, determined that the requested relief for the Project substantially as shown on the plans titled "132 Carlton Street Renovations" prepared by Isgenuity, dated 1/04/2016 and 3/07/16, is desirable and unanimously voted in favor of such relief subject to the conditions set out below.

With respect to the required special permits under Section 5.09, Section 5.43, Section 6.04, Section 6.06 and Section 8.02 of the Zoning By-Law, the Board makes the following findings pursuant to Section 9.05, and other relevant provisions, of the Zoning By-Law:

1. The specific site is an appropriate location for such a use, structure or condition.
2. The use as developed will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.
6. The Project meets the community impact and design review standards set forth in Section 5.09(4) of the Zoning By-Law.
7. There is no need to provide separate loading facilities at the Project.

With respect to the required variances from Section 4.07, the Board finds that, should the petitioner enter into a tax agreement with the Town for the minimum period and as provided under Section 9.09 of the Zoning By-Law, the petitioner will meet the requirements for a use variance under Massachusetts General Laws Chapter 40A, Section 10 and said Section 9.09 and in support thereof the Board makes the following statutory findings and findings pursuant to Section 9.09 of the Zoning By-Law:

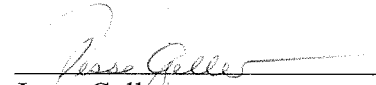
1. The property has unique characteristics relating to soil conditions, shape or topography that especially affect the property, but do not generally affect the SC-7 District, in that Property abuts streets on the three sides and is elevated above Carlton Street.
2. A literal enforcement of the provisions of the Zoning By-Law would involve substantial hardship to the applicant.
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

Therefore, the Board voted unanimously to grant the requested special permits under Section 5.09, Section 5.43, Section 6.04, Section 6.06 and Section 8.02 of the Zoning By-Law, the variance from Section 4.07 of the Zoning By-Law and to modify its prior decision in

Case #1703 dated August 12, 1971, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, including color, window and material details, subject to the review and approval of the Preservation Commission and the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final site and landscaping plan, indicating all parking space dimensions and pickup areas, mechanical equipment, lighting, walls, fencing, and counterbalancing amenities, subject to the review and approval of the Preservation Commission and the Assistant Director of Regulatory Planning.
3. One identification sign shall be allowed subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

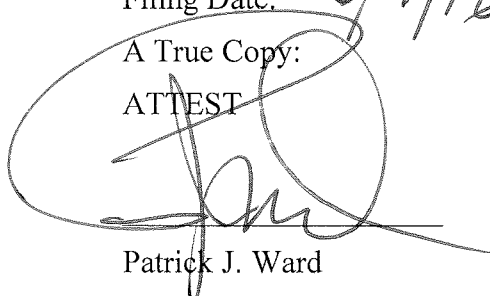
Unanimous Decision of
The Board of Appeals


Jesse Geller

Filing Date: 6/9/16

A True Copy:

ATTEST


Patrick J. Ward
Clerk

Board of Appeals

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